IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SEVENTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

-

WRIT PETITION NO : 36590 of 1998

Between:

G.M.Siddiqui S/o.Gulam Dastagir Siddiqui,

Retired U.D.C in A.P.S.E.B.,
R/o.Saidabad, Hyderabad.

..... PETITIONER

AND

1 A.P.S.E.B., rep. by its Member-Secretary,
Vidyut Soudha, Somajiguda, Hyderabad.
2 Superintending Engineer (Operation Circle), A.P.S.E.B., Hyderabad.
3 Chief Engineer (Metropolitan Zone), A.P.S.E.B., Mint Compound,

Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, or order or direction especially one in the nature of Writ of Mandamus: i) declaring the action of the respondents in not promoting the petitioner as Junior Accounts Officer under the quota reserved for unqualified candidates at least w.e.f. 15/08/1996 as illegal and arbitrary. ii) Direct the respondents to promote the petitioner as Junior Accounts Officer w.e.f. 15/08/1996 and fix the petitioner's pay in the above cadre w.e.f. 15/08/1996 and pay all other consequential benefits and also to revise the petitioner's pensionary benefits accordingly.

Counsel for the Petitioner: MR. K.VASUDEVA REDDY

Counsel for Respondents: MR. KANAKAMEDALA RAVINDRA KUMAR/MR. SAMINENI KISHORE, S.C. FOR A.P.S.E.B.

The Court made the following:

ORDER:

This writ petition is filed seeking a Mandamus declaring the action of the respondents in not promoting the petitioner as Junior Accounts Officer under the quota reserved for "unqualified candidates" at least with effect from 15-08-1996 as arbitrary and illegal.

It is the case of the petitioner that he was initially appointed as Lower Division Clerk in the respondent-Andhra Pradesh State Electricity Board (for short, 'Board') with effect from 26-05-1962. Subsequently, he was promoted as Upper Division Clerk with effect from 01-09-1980. According to the petitioner, a person working as U.D.C is entitled for being promoted to the post of Junior Accounts Officer/Accountant; however, one has to pass accounts test. As there were many persons among the U.D.Cs, who could not pass accounts test and though they are seniors, they could not be promoted. Under those circumstances, the respondent-Board has issued B.P.Ms.No.326, dated 13-09-1993 and further instructions issued by the Board from time to time that the senior most U.D.Cs could not get themselves passed in the account test may also be considered in the quota of "unqualified candidates." Thus, in the instructions issued by the Board, a ratio for promotion of the unqualified candidates was also fixed i.e. qualified candidates – four : unqualified candidate – one. According to the petitioner, though the posts meant for qualified candidates were filled up, the posts, which are earmarked for unqualified candidates, were not filled up. The petitioner had fairly good chance of being promoted against the quota of unqualified candidates since he is the senior most person in the cadre of U.D.C. However, since the said vacancies earmarked for unqualified candidates were not filled up, the petitioner was denied his rightful promotion to the post of Junior Accounts Officer and the same is arbitrary and illegal. Ultimately, the petitioner also retired from service on attaining the age of supperannuation on 30-04-1998.

Though no counter is filed on behalf of the respondent-Board, learned Counsel for respondents, Sri S.Kishore, strenuously contended that the filling up of vacancy is prerogative of the Department. No person however qualified and eligible may be, cannot compel the Department to fill up the vacancies even if he is qualified and eligible for being appointed to such post. May be the petitioner is the senior most and he would have been considered and appointed for the post of Junior Accounts

Officer at the vacancies earmarked against the unqualified candidates are filled up, that itself does not confer any right on the petitioner.

I have given earnest consideration to the respective submissions made by the learned Counsel on either side and I have gone through the material placed on record. I am of the considered opinion that when once the quota meant for qualified candidates and unqualified candidates is fixed at the ratio of 4 : 1 and the vacancies earmarked against qualified candidates are filled up, there is no reason why the posts meant for unqualified candidates were left out. It is understandable that no vacancies are filled up either meant for qualified candidates or unqualified candidates, but having filled up the vacancies meant by the qualified candidates and not filling the posts meant for unqualified candidates is nothing but arbitrary and illegal. In this view of the matter, the respondents are directed to consider the feasibility of promoting the petitioner to the post of Junior Accounts Officer in the respondent-Board may be notionally and extend all benefits as required there under including the pensionary benefits.

With the above direction, the writ petition is disposed of. No order as to costs.

C.V.RAMULU, J

17th June, 2005.

Note:-

Issue C.C. in one week.

B/o.

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Member Secretary, A.P.S.E.B., Vidyut Soudha, Somajiguda, Hyderabad.
2 The Superintending Engineer (Operation Circle), A.P.S.E.B.,

Hyderabad.
3 The Chief Engineer (Metropolitan Zone), A.P.S.E.B., Mint Compound,

Hyderabad.

4 Two CD copies.